

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)
)
An Allocation of Spectrum for the) RM- 9267
Private Land Mobile Radio Services)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

TO: The Chief, Office of Engineering and Technology

Comments of the
Industrial Telecommunications Association, Inc.

The Industrial Telecommunications Association, Inc. ("ITA"), pursuant to Sections 1.4, and 1.405,¹ of the Commission's rules, and in response to the *Public Notice* released April 30, 1998,² hereby respectfully submits these comments to the above captioned petition for rule making.³

I. Statement of Interest

1. ITA is a Commission-certified frequency advisory committee and coordinates in excess of 6,000 applications per year on behalf of applicants seeking Commission authority to operate business and industrial/land transportation radio stations on frequency assignments allocated between 30-900 MHz.

2. ITA enjoys the support of a membership that includes more than 6,000 licensed two-

¹ See 47 C.F.R. §§ 1.4, 1.405.

² *Public Notice*, Office of Public Affairs Reference Operations Division Petitions for Rulemaking Filed, Report No. 2272, released April 30, 1998.

³ *Petition for Rule Making Submitted by the Land Mobile Communications Council*, In the Matter of An Allocation of Spectrum for the Private Mobile Radio Services, RM-9267, filed April 22, 1998 ("*Petition*").

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way land mobile radio communications users, PMRS oriented radio dealer organizations, and the following trade associations:

- Alliance of Motion Picture and Television Producers
- Aeronautical Radio, Inc.
- Associated Builders & Contractors, Inc.
- Florida Citrus Processors Association
- Florida Fruit & Vegetable Association
- National Mining Congress
- National Propane Gas Association
- National Ready-Mixed Concrete Association
- National Utility Contractors Association
- New England Fuel Institute
- United States Telephone Association

In addition, ITA is affiliated with the following independent market councils: the Council of Independent Communications Suppliers ("CICS"), the Taxicab & Livery Communications Council ("TLCC"), and the Telephone Maintenance Frequency Advisory Committee ("TELFAC"), and USMSS.

3. ITA, as one of the primary advocates of the private wireless community, and an active member of the Land Mobile Communications Council ("LMCC"), is a participant in nearly every proceeding affecting the private wireless industry. Throughout these proceedings, ITA has steadily maintained that certain Commission policies related to the implementation of its auction authority have had a detrimental impact on the availability of spectrum for business and industrial/land transportation licensees. Accordingly, ITA was pleased to contribute to the development of the LMCC petition for rule making ("petition"), and is pleased to now have this opportunity to express its support for the policy recommendations it contains.

II. The Commission should engage in a public "dialogue" on the needs of the private land mobile community.

4. ITA was gratified to see the petition expeditiously placed on *Public Notice*.⁴ However, unless the Commission responds to the comments it receives with a formal statement of its own views -- for example by publishing a *Notice of Inquiry*, or proceeding with a *Notice of Proposed Rule Making* -- ITA fears that the Commission will miss an opportunity to have a meaningful dialogue with one of its oldest and largest constituencies.

5. In addition to the stated request for an allocation of spectrum, the LMCC petition raises many fundamental issues related to the regulation of the private wireless industry. Specifically, the petition challenges the belief that commercial service providers can satisfy the internal communication needs of all private licensees;⁵ questions the Commission's past interpretation of its competitive bidding authority under Section 309(j) of the Telecommunications Act of 1934;⁶ and examines some of the implications of the amendments to the Commission's competitive bidding authority found in the 1997 Balanced Budget Act.⁷ ITA fully supports the policy statements made in the petition, and will not restate them here. Rather, ITA encourages the Commission to respond to the petition, and the comments filed in response to it, with a publication of its own views on the character and needs of the private wireless community.

6. Since 1993, when Congress directed the Commission to create regulatory parity among

⁴ The LMCC petition was filed with the Commission on April 22, 1998, and appeared on *Public Notice* on April 30, 1998.

⁵ *Petition* pgs. 20-27.

⁶ *Id* pgs. 6-7.

⁷ *Id* pg. 5.

the several commercial radio services,⁸ the policy discussion within the Commission has been focused primarily on Commercial Mobile Radio Services (“CMRS”). Although the Commission created the broad regulatory category of Private Mobile Radio Service (“PMRS”), auctions and CMRS have dominated the spectrum policy landscape. While the Commission has devoted its resources to the development of a universal regulatory scheme for commercial services, the PMRS community has had to continually defend its justification for an alternative regulatory scheme.

7. Simply stated, in recent years PMRS has been defined only as “not CMRS.” Now, the Commission has the opportunity to begin a discussion with the entire private wireless industry on the true nature and character of PMRS, and the most effective means by which it may be regulated. As stated above, the Commission should either publish a *Notice of Inquiry*, or proceed with a *Notice of Proposed Rule Making* that outlines the Commission’s views on the private wireless industry. The ensuing dialogue will give the Commission an in-depth review of the technical applications employed on private radio frequencies; the contributions these systems make towards the protection of life, health, and property; and the added efficiencies that these systems confer in the production of goods and services throughout the American economy.

III. Implementation of the 1997 Balanced Budget Act

8. The insight the Commission will gain from an open review of the private wireless industry will be of particular relevance during the implementation of the 1997 amendments to the Telecommunications Act. These amendments expanded the Commission’s auction authority,⁹ and

⁸ See 47 U.S.C. §§ 151-614 (Communications Act of 1934 as Amended).

⁹ 47 U.S.C. § 309(j)(2)(1997).

provided two definitions of "public safety": one definition identifies entities exempt from auctions;¹⁰ a second definition identifies entities eligible for public safety spectrum allocations.¹¹

9. Under the Commission's revised auction authority the only entities specifically exempt from auctions are "public safety radio services."¹² However, such services are defined to include:

[P]rivate internal radio services used by State and local governments and *non-government entities* and including emergency road services provided by not-for-profit organizations, that --

- (i) are used to protect the safety of life, health, or property; and
- (ii) are not made commercially available to the public . . . [emphasis added].¹³

The exact definition of which entities are meant to be exempt from auctions is further clouded by the Conference Report that accompanied the Balanced Budget Act.¹⁴ This report explained that the term "public safety radio services" included not only traditional public safety entities, but utilities, pipelines, railroads, and others.

10. Because Congress made a point of listing PMRS licensees in the Conference Report that were not specifically listed in the language of the Act, it is clear that Congress intended the exemption from auctions to apply to more entities than just "emergency road services provided by not-for-profit organizations." Consequently, as the Commission contemplates the implementation of the 1997 amendments, one of the first questions that will need to be addressed is which private

¹⁰ 47 U.S.C. § 309(j)(2)(A)(1997).

¹¹ 47 U.S.C. § 337(1997).

¹² 47 U.S.C. § 309(j)(2)(A)(1997).

¹³ *Id.*

¹⁴ 143 Congressional Record H 6172 (July 29, 1997).

internal radio services used by non-government entities are used to protect the safety of life, health, and property, and are thus exempt from auction.

11. From ITA's perspective, this exemption includes not just emergency road services but virtually all types of private internal radio services. For example, also significantly contributing to the safety of life, health, and property are private internal systems employed in the agriculture, airline, construction, road-building, taxicab, trucking, manufacturing, ranching, energy exploration, forest products, mining, and telephone maintenance industries, just to name a few. The Commission's auction authority is also limited to the extent that it may only auction licenses for which it has received mutually exclusive applications. And in the case of shared spectrum -- the great majority of private licensees operate in a shared environment -- mutually exclusive applications are never filed.

12. Further, once the Commission has determined which entities are, or are not, exempt from auction, it must decide whether or not an auction serves the public interest. Auctions for the sake of auctions, amount to little more than regulation for the sake of regulation. This is particularly true in the case of auctions for bands of spectrum that are already heavily occupied by incumbent licensees. Without a compelling public policy objective -- and the identification of relocation spectrum -- the Commission should always avoid auctions for encumbered spectrum.

IV. The Commission should pursue lease fee authority from Congress as an alternative licensing mechanism for new allocations of spectrum for private wireless entities.

13. ITA believes that auctions, while a valuable and efficient licensing tool for subscriber-based commercial services, are inappropriate for private internal services. However, ITA recognizes that the Commission has a mandate from Congress to recover a portion of the value of

the spectrum for the public treasury. So, rather than rail against the current regulatory environment, ITA has sought alternative solutions. Specifically, ITA has been a proponent of efficiency-based spectrum lease fees as an alternative licensing mechanism for new private spectrum allocations.¹⁵

14. During the debate over the Balanced Budget Act, ITA supported a bill that would have granted the Commission lease fee authority for the allocation of 12 MHz of new spectrum in the 746-806 MHz band.¹⁶ While this bill was not ultimately included in the Balanced Budget Act, ITA believes that efficiency-based lease fees should be supported as a more appropriate licensing tool for private wireless allocations than auctions. Efficiency-based lease fees are based on the amount of spectrum used by a licensee, and not on arbitrary budget requirements. So, an applicant that employs advanced spectrally-efficient technologies will be rewarded with lower spectrum costs, and spectrum warehousing will be discouraged. Lease fees that are based on the fulfillment of budget shortfalls provide no spectrum efficiency benefits, and bear no relation to true market values.¹⁷

15. ITA urges the Commission to take an active role in requesting lease fee authority from Congress. Because the amounts of spectrum, areas of geographic coverage, and frequency

¹⁵ ITA would oppose the imposition of spectrum lease fees on existing allocations and assignments.

¹⁶ *Private Wireless Spectrum Availability Act of 1997*, S. 741.

¹⁷ While the exact mechanism for determining a cost basis for lease fees is a subject of some debate, the Commission is currently engaged in an analysis of the proper means for setting spectrum lease fees with regards to ancillary use of the Digital Television Spectrum (*Notice of Proposed Rule Making*, (MM Docket No. 97-247)). A similar analysis could be conducted for private internal radio spectrum lease fees.

coordination related to private use are diverse and unique to individual users, efficiency-based lease fees are more suitable licensing tool than auctions. Input from the Commission on the limited utility of auctions as a universal licensing tool would be a valuable contribution to the consideration of lease fees in Congress.

V. Conclusion

16. The LMCC petition makes a compelling case that an additional allocation of spectrum for the private mobile radio services is sorely needed. However, unless the Commission adopts spectrum allocation practices that more accurately reflect the nature of the private wireless industry, the full benefits of any new spectrum will not be realized. ITA is committed to collaborating with the Commission -- in whatever ways it deems appropriate -- to ensure the long-term success, vitality, and survival of the private wireless industry, and looks forward to the coming dialogue on these important matters.

Respectfully Submitted,

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